IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2410 OF 2006

Janki Ramchandra Kadam and others .. Petitioners
v/s.
Special Executive Magistrate and Assistant Commissioner
of Police, D.N. Nagar Division, Mumbai and another .. Respondents

Ms. V.R. Raje for the petitioners.
Mr. P.A. Pol, APP for the State.

CORAM : B.H. MARLAPALLE, J.
DATED : 29TH AUGUST, 2007

P.C.

The petitioners have challenged the order dated 23.8.2006 calling upon the petitioners to furnish personal bond for good conduct. The said order was stayed by the State on 16th November, 2006 and the stay is continued till today.

2. The only ground raised against the impugned order is that on the day it was passed, all the witnesses were absent. The learned APP rightly submitted that the officers concerned should be allowed to proceed afresh by giving fresh hearing to the petitioners and to record the statements of witnesses in their presence and the final order be passed after hearing the petitioners.

3. Hence, the impugned order dated 23rd August, 2006 is set aside. The Special Executive Magistrate and Assistant Police Commissioner is hereby directed to hear the petitioners afresh and record the statements of the witnesses

concerned in their presence and pass fresh order on/or before 31st October, 2007. It is also clarified that it is not necessary that all the witnesses must remain present and it is for the subjective satisfaction of the competent authority to proceed on the basis of the depositions/statements of those witnesses present.

4. Petition is disposed of in terms of the above order. Petitioners to appear before the competent authority on 10th September, 2007 at 03.00 p.m.

(B.H. MARLAPALLE, J.)